

REMARKS**Summary of the Office Action**

In the Office Action, claims 1, 3, 4, 6, 7, and 8 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,212,632 to *Baum et al.* (“*Baum*”). Claims 1-4 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Gmeiner* (DE 296 17 764 U1). And finally, claims 1 and 5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Signode* (EP 0 053 828 A1) in view of *Baum*.

Summary of the Response to the Office Action

Applicants respectfully traverse the rejections applied in the Office Action. Accordingly, claims 1-8 are pending for further consideration.

All Subject Matter Complies With 35 U.S.C. § 102(b)

Claims 1, 3, 4, 6, 7, and 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Baum*. These rejections are respectfully traversed in view of the following comments.

With regard to these rejections under 35 U.S.C. § 102(b), claim 1 recites “wherein said nails are connected to each other by the connecting bands located at positions substantially near an upper end and a lower end of each of said shaft portions.” Applicants respectfully submit at least these features of independent claim 1 are not disclosed, taught or suggested by *Baum*.

Baum shows a flexible carrier strip of fasteners for use in fastener driving tools. See *Baum* at Figs. 1 and 3. The flexible carrier strip is made of a plastic material extended across the opposite sides of the shanks of the fasteners and formed into a single integral flexible carrier strip holding the fasteners in place. See col. 1, lines 40-50 and Figs. 1-10 of *Baum*. Applicants

respectfully submit that the location of the flexible carrier strips in *Baum* are situated far inward from the ends of the shanks of the fasteners.

In contrast to *Baum*, the present invention discloses connecting bands located substantially near the ends of the nail's shaft portions. See at least page 4, line 21 through page 5, line 1 and Figs. 1-6 of the specification. The heads of the nails abut an adjacent connecting band located at the upper end of a shaft portion causing the heads to be offset when "the stick-type connected nails are superposed adjacent to other stick-type connected nails," as recited in claim 1. Accordingly, Applicants respectfully submit that *Baum* does not show "connecting bands located at positions substantially near an upper end and a lower end of each of said shaft portions," as recited in claim 1. Emphasis added. Applicants submit that the plain and ordinary meaning of word "substantially near" is not satisfied by *Baum*. That is, *Baum* does not, to a great extent or degree, show flexible carrier strips located at the ends of the shanks of the fasteners. Thus, *Baum* cannot anticipate the present invention.

As pointed out in MPEP § 2131, a claim is anticipated by a prior art reference under 35 U.S.C. § 102(b) only if each and every element as set forth in the claim is found. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051 (Fed. Cir. 1987). Therefore, Applicants respectfully assert that the rejections under 35 U.S.C. § 102(b) should be withdrawn because *Baum* does not teach or suggest each feature of independent claim 1. Additionally, it is further respectfully submitted that dependent claims 3, 4, 6, 7 and 8 are also allowable insofar as they recite the patentable combinations of features recited in independent claim 1, as well as reciting additional features that further distinguish over the applied art.

Claims 1-4 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Gmeiner* (DE 296 17 764 U1). These rejections are respectfully traversed in view of the following comments.

With regard to the rejections under 35 U.S.C. § 102(b), claim 1 recites “wherein said nails are connected to each other by the connecting bands located at positions substantially near an upper end and a lower end of each of said shaft portions.” Applicants respectfully submit that at least these features of independent claim 1 are not disclosed, taught or suggested by *Gmeiner*.

Gmeiner shows two strips connecting fasteners for use in fastener driving tools. See *Gmeiner* at Figs. 1 and 2. The strips are extended across the middle portions of the shanks of the fasteners, holding the fasteners in place. See Figs. 1-2 of *Gmeiner*. Applicants respectfully submit that the location of the strips in *Gmeiner* are also situated far inward from the ends of the shanks of the fasteners, also discussed above with regard to *Baum*.

Like *Baum*, *Gmeiner* does not show “connecting bands located at positions substantially near an upper end and a lower end of each of said shaft portions,” as recited in claim 1. Emphasis added. That is, *Gmeiner* does not, to a great extent or degree, show strips located at the ends of the shanks of the fasteners. Thus, *Gmeiner* also cannot anticipate the present invention as recited in claim 1. Additionally, it is further respectfully submitted that dependent claims 2, 3, and 4 are also allowable insofar as they recite the patentable combinations of features recited in independent claim 1, as well as reciting additional features that further distinguish over the applied art.

All Subject Matter Complies With 35 U.S.C. § 103(a)

Claims 1 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Signode* in view of *Baum*. Applicants respectfully submit that *Signode* does not make up for the deficiencies of *Baum*. Namely, *Signode* does not teach or suggest at least the “connecting bands located at positions substantially near an upper end and a lower end of each of said shaft portions,” features recited in independent claim 1. Emphasis added.

To establish a *prima facie* case of obviousness, three basic criteria must be met (see MPEP §§ 2142-2143). First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art references must teach or suggest *all* the claim features.

Signode shows a resilient sealing washer 24, in a washer strip 22, serially connected at selected weakened shear locations 26. The washer 24 has an opening 28 that receives a fastener element shank portion 19. When the fastener 14 is driven by a driver blade 16, the fastener 14 slides within the washer 24 until the washer is situated just beneath the head portion 20, whereupon the washer 24 is sheared and separated at the shear location 26. See page 1 and Figs. 1B, 2A, and 13B of *Signode*.

As can be seen in Figs. 1B, 2A, and 13B, *Signode* does not have washer strips 22 located at the ends of the fastener element shank portions 19. That is, *Signode* does not, to a great extent or degree, show washer strips 22 located at the ends of the fastener element shank portions 19. Further, *Signode* states that the washer 24 slides until it is situated just beneath the head portion 20 when being driven by the driver blade 16. As such, the washer 24, and hence the

washer strip 22, cannot have been located substantially near the end of the fastener element shank portions 19 before it was driven. Thus, *Signode* cannot make up for the deficiencies of *Baum*, previously mentioned.

The Office Action does not establish a *prima facie* case of obviousness at least because it has not established that each and every claimed feature is taught or suggested by the present invention. As demonstrated above, the cited references, whether taken separately or in combination, do not teach or suggest at least the “connecting bands located at positions substantially near an upper end and a lower end of each of said shaft portions,” features recited in independent claim 1 of the present invention. Emphasis added.

For at least the above-mentioned reasons, Applicants respectfully submit that independent claim 1 is allowable. Additionally, claim 5 is allowable at least because it recites the same combination of features as its independent claim, as well as the additional features it recites that further distinguish it over the applied art. Accordingly, it is respectfully requested that the rejections under 35 U.S.C. §§ 102(b) and 103(a) be withdrawn.

Moreover, the references of record do not disclose features described in the specification at page 5, line 13 through page 6, line 12.

CONCLUSION

In view of the foregoing, Applicants respectfully request reconsideration and the timely allowance of the pending claims. Should the Examiner feel that there are any issues outstanding after consideration of the response, the Examiner is invited to contact the Applicants' undersigned representative to expedite prosecution.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. §1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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